

Introduced by Senator Kuehl

February 22, 2005

An act to add Section 48906.5 to the Education Code, relating to public schools.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as introduced, Kuehl. Public school pupils: interrogation.

Existing law, with certain exceptions, requires a principal or other school official to immediately notify a pupil's parent or guardian if the official releases a pupil to a peace officer for the purpose of removing the pupil from the school premises.

This bill, with certain exceptions, would require the principal of a school to take immediate steps to seek the consent of the parent or guardian of an elementary school pupil prior to making the pupil available to a peace officer for questioning, and with certain exceptions, would prohibit making the pupil available for questioning if the parent or guardian requests that the pupil not be questioned until he or she can be present. The bill would permit a member of the school administration, a school counselor, or a school teacher, selected by the pupil, to be present at the questioning under prescribed circumstances.

This bill would require the principal, prior to making a minor high school pupil available for questioning by a peace officer, to inform the pupil of the pupil's right to have a person, as prescribed, present during the questioning.

By requiring these local school officials to perform these functions, this bill would impose a state-mandated local program.

This bill would make a school officer or staff member who is present in the questioning immune from civil or criminal liability arising from participation in that questioning.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Community policing and the presence of school resource
4 officers on school campuses serve a vital role fostering a safe
5 learning environment for pupils, faculty, and staff.

6 (b) In order to enable members of the law enforcement
7 community to more effectively fulfill this role, it is the intent of
8 the Legislature to encourage law enforcement officers to form
9 positive relationships with both parents and pupils who are part
10 of the school community.

11 (c) It is also vitally important that parents be given a
12 meaningful opportunity to be active and informed participants in
13 the educational lives of their children, including situations
14 involving issues of school discipline and interaction with
15 members of the law enforcement community in the school
16 setting.

17 (d) In furtherance of this objective, it is the intent of the
18 Legislature to increase the level of participation of parents when
19 their minor children are being questioned by law enforcement in
20 school or at a school-sponsored activity.

21 SEC. 2. Section 48906.5 is added to the Education Code, to
22 read:

23 48906.5. (a) (1) Before making an elementary school pupil
24 available to a peace officer for the purpose of being questioned
25 by a peace officer, the principal of the elementary school, or his
26 or her designee, shall take immediate steps to obtain the oral

1 consent of the parent or guardian of the pupil to permit the
2 questioning.

3 (2) If the parent or guardian requests that the pupil not be
4 questioned until he or she can be present, the pupil may not be
5 made available to the peace officer for questioning until the
6 parent or guardian is present.

7 (3) If school officials are unable, after reasonable efforts
8 undertaken within a period not to exceed one hour, to contact a
9 parent or guardian in order to obtain consent pursuant to this
10 subdivision, a school administrator, school counselor, or school
11 teacher who is reasonably available and selected by the pupil,
12 shall be present during the questioning.

13 (4) If the school administrator, school counselor, or school
14 teacher selected by the pupil declines to be present during the
15 questioning, the principal, or his or her designee, shall be present
16 during the questioning.

17 (5) In those cases in which school officials are unable to
18 contact the pupil's parent or guardian, after the questioning has
19 been completed, the principal or his or her designee shall
20 immediately notify the parent or guardian that the questioning
21 has occurred and make the staff member who was present during
22 the questioning available to inform the parent or guardian about
23 the questioning.

24 (b) (1) Before making a high school pupil under 18 years of
25 age available to a peace officer for the purpose of questioning by
26 the peace officer, the principal of the school, or his or her
27 designee, shall inform the pupil that the pupil has the right to
28 request that his or her parent or guardian or an adult family
29 member, or person on the list of emergency contacts for the pupil
30 be present during the questioning.

31 (2) If the person selected by the pupil cannot be made
32 available within a reasonable period of time, not exceeding one
33 hour, or declines to be present at the questioning, the principal or
34 his or her designee shall inform the pupil that the pupil may
35 select as an alternate, a school administrator, school counselor, or
36 school teacher who is reasonably available to be present during
37 the questioning.

38 (3) If the person selected by the pupil declines to be present
39 during the questioning, the principal, or his or her designee, shall
40 so inform the pupil and advise the pupil that the principal, or his

1 or her designee, will be present during the questioning if the
2 pupil so requests.

3 (4) If the pupil exercises his or her right pursuant to this
4 subdivision to have one of the persons designated in paragraph
5 (1), (2), or (3) present during the questioning, the pupil may not
6 be made available to the peace officer for questioning until that
7 person is present.

8 (c) Subdivisions (a) and (b) do not apply if any of the
9 following conditions exist:

10 (1) The peace officer reasonably believes that, due to exigent
11 circumstances, the inability of the officer to immediately
12 question the pupil will materially interfere with the ability of the
13 officer to conduct his or her investigation and there is a
14 substantial risk that a suspect may not be apprehended or
15 prosecuted in a timely manner. In that case, if an elementary
16 school pupil is being questioned, the principal or his or her
17 designee shall be present during the questioning and shall take
18 immediate and continuous steps to notify the parent or guardian
19 by telephone about the questioning, and if unsuccessful in doing
20 so before the questioning, shall take immediate steps to notify the
21 parent or guardian about the questioning after the questioning has
22 been completed. If a high school pupil is being questioned, the
23 pupil shall be given the option of having the principal or his or
24 her designee present during the questioning.

25 (2) The peace officer reasonably believes that there is a
26 substantial risk of immediate personal injury or substantial
27 property damage. In that case, if an elementary school pupil is
28 being questioned, the principal or his or her designee shall be
29 present during the questioning and shall take immediate and
30 continuous steps to notify the parent or guardian by telephone
31 regarding the questioning, and if unsuccessful in doing so before
32 the questioning is completed, shall take immediate steps to notify
33 the parent or guardian regarding the questioning after it has been
34 completed. If a high school pupil is being questioned, the pupil
35 shall be given the option of having the principal or his or her
36 designee present during the questioning.

37 (3) The minor pupil being questioned is suspected of being a
38 victim of child abuse as defined in Section 11165.6 of the Penal
39 Code, or the minor pupil is being questioned pursuant to Section
40 305 of the Welfare and Institutions Code, and either the principal

1 or his or her designee or the peace officer has reasonable belief
2 that the pupil would be endangered by the notification
3 requirements of subdivision (a) or (b). In that case, if the pupil is
4 an elementary school pupil, the principal of the school, or his or
5 her designee, shall inform the pupil that the pupil has the right to
6 select a school administrator, school counselor, or school teacher
7 who is reasonably available to be present during the questioning,
8 as provided in paragraphs (3) and (4) of subdivision (a). If the
9 pupil is a high school pupil, the principal of the school, or his or
10 her designee, shall inform the pupil that the pupil has the right to
11 select another person to be present during the questioning, as
12 provided in subdivision (b).

13 (4) (A) In the case of an elementary school pupil, the peace
14 officer's questioning of the pupil concerns the commission of
15 criminal activity by the person who would otherwise be present
16 during the questioning pursuant to subdivision (a). In that case,
17 the principal of the school, or his or her designee, shall inform
18 the pupil that the pupil has the right to select a school
19 administrator, school counselor, or school teacher who is
20 reasonably available to be present during the questioning as
21 provided in subdivision (a).

22 (B) In the case of a high school pupil, the peace officer's
23 questioning of the pupil concerns the commission of criminal
24 activity by the person selected by the pupil pursuant to
25 subdivision (b). In that case, the principal or his or her designee
26 shall so inform the pupil and advise the pupil that he or she may
27 select another person to be present during the questioning, as
28 provided in subdivision (b).

29 (5) The pupil is on probation or parole and is being
30 interviewed or otherwise contacted by a probation or parole
31 officer in the normal course of duties of the probation or parole
32 officer.

33 (d) Except in exigent circumstances as determined by the
34 peace officer, any questioning of a pupil by a peace officer for
35 any reason other than the ordinary, day-to-day conversation that
36 is to be expected among members of a school community, shall
37 take place in a private location, including, but not limited to, the
38 principal's office, and may not take place in a classroom or
39 hallway or other areas where pupils or others may be present.

1 (e) A school official present during the questioning of a pupil
2 under this section may not disclose matters discussed with the
3 pupil other than to the parent or guardian of the pupil, the
4 attorney for the pupil, other school officials, or a court.

5 (f) Any school officer or staff member present at the
6 questioning of the pupil by a peace officer pursuant to this
7 section is immune from civil or criminal liability arising from his
8 or her participation during the questioning of the pupil.

9 (g) The failure of school officials to comply with this section
10 does not render any evidence, otherwise lawfully obtained by a
11 peace officer, inadmissible in a court of law or result in any other
12 sanction in a criminal trial.

13 (h) For the purposes of this section, “questioning” means only
14 formal questioning in which the principal or his or her designee
15 makes a pupil available to a peace officer, at the request of the
16 peace officer, the principal or his or her designee, for questioning
17 as a victim, suspect, or person with information concerning a
18 suspected violation of a school rule that constitutes grounds for
19 expulsion or a suspected commission of a crime. For the
20 purposes of this section, “formal questioning” means only
21 questioning of a pupil by a peace officer that occurs on school
22 grounds. “Formal questioning” does not include ordinary,
23 day-to-day conversations between a pupil and a school resource
24 officer or peace officer.

25 (i) For the purposes of this section “elementary school pupils”
26 are the pupils who are enrolled in kindergarten or any of grades 1
27 to 8, inclusive. “High school pupils” are the pupils who are
28 enrolled in any of grades 9 to 12, inclusive.

29 SEC. 3. If the Commission on State Mandates determines that
30 this act contains costs mandated by the state, reimbursement to
31 local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.